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SUBJECT: Statutory Restrictions on the Disposition of
Government Financial Records

1. The general statutory restriction applicable to agency heads in the disposal of Government financial records is set out as 44 U.S.C. Section 374. This states:

"Records pertaining to claims and demands by the Government of the United States or against it, or to any accounts in which the Government of the United States is concerned, either as debtor or creditor, shall not be disposed of by the head of any agency under any authorizations granted pursuant to the provisions of sections 371, ¹372, ²and 373³ of this title, until such claims, demands, and accounts have been settled and adjusted in the General Accounting Office, except upon the written approval of the Comptroller General of the United States."

1 This provides that if the Joint Committee on Printing should determine that the records identified on schedules submitted to it are not to be preserved, Administrator, General Services is to notify the agency heads having custody of the records, in which case such records may be disposed of pursuant to regulations (issued by the National Archives Council).

2 This provides that if the Joint Committee on Printing should fail to act with respect to any schedule of records submitted to it within ten days prior to adjournment, the Administrator, General Services may authorize agencies to dispose of the records covered by the schedule.

3 Under the terms of this section, the Administrator, General Services may empower an agency head to dispose of records whenever he determines that he is accumulating records of the same form or character, the disposal of which has previously been authorized by the Congress.

2. In its original form, section 374 was enacted as section 9 of the Act of July 7, 1943 (57 Stat. 382). This statute had as its avowed purpose "to provide for the disposal of certain records of the United States Government." It required the National Archives Council⁴ to promulgate implementing regulations. It set out the responsibilities of agency heads, the Archivist and the Joint Committee.⁵ It defined records to include "all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by any agency of the United States Government in pursuance of Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data contained therein."⁶

4 Created by the Act of June 19, 1934 (48 Stat. 1122), which also established the Office of Archivist. By the Act of June 30, 1949; 63 Stat. 377, (Federal Property and Administrative Services Act of 1949), the Council and the Office were transferred to the General Services Administration.

5 The presiding officer of the Senate was to appoint two Senators, who with the members of the Committee on the Disposition of Executive Papers of the House of Representatives, would constitute a Joint Committee for purposes of reporting on the schedules referred to it.

In regard to the disposition of records, the preservation of which was not warranted, it was provided that the agency head would submit to the Archivist a schedule of records, which, if approved by him would be submitted for approval of the Joint Committee. To the extent that sections 6, 7 and 8 authorized the disposal under restrictions similar to those now appearing in sections 371, 372 and 373, section 9 specifically prohibited the disposition of records pertaining to claims and demands by the Government of the United States or against it under the authority of those sections, until the claims, demands and accounts shall have been settled and adjusted in the General Accounting Office, except upon the written approval of the Comptroller General of the United States.

3. The history of the Act has been researched, to include the Congressional Record, in the hope of realizing a scintilla of evidence for the legal argument that because of its special responsibilities the Agency's financial records are not subject to the section 9 restrictions. That effort has proved to be fruitless.